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United States
Department of
Agriculture

JUL 10 1997

Food and
Consumer
Service

Mountain Plains Region
Reply to
Attn. Of: SP 97-23

1244 Speer Blvd. Subject: Confidentiality of Free and Reduced Price Information--
Denver, CO Continuation of Cooperation with Education Officials
80204-3581

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas,
(Child Nutrition Programs) Missouri ED, Montana OPI,
Nebraska ED, North Dakota,
South Dakota, Utah and
Wyoming ED

For School Year 1997-1998 we are again authorizing State agencies (SAs) and school food authorities to cooperate with officials collecting data on individual student's free and reduced price eligibility for either or both of two programs administered by the U. S. Department of Education (USDE). The two programs are, the National Assessment of Educational Progress (NAEP), and Title I. Guidance for the release of this confidential free and reduced price information has already been provided to you in our memorandum SP 95-16 (issued September 26, 1995) for NAEP, and our memorandum SP 96-08 (issued March 4, 1996) for Title I.

Attached is the information that we have provided before which deals with the release of confidential individual free and reduced price data and describes the procedures NAEP officials use for collecting and protecting this data. There is no comparable attachment covering Title I data collection, but release of data for allocation and evaluation purposes continues to be authorized in line with SP 96-08, as noted above.

Recent questions have been raised concerning situations in which the State education agency or the USDE contracts with an independent entity to conduct assessments. To the extent that the contractor is acting as an official agent of the State or Federal government, the contractor should be authorized access to a student's eligibility status. If there are any questions as to whether or not the contractor is acting officially on behalf of the State or Federal government, the SA should contact the office of the State education agency responsible for conducting the assessment.

Please contact our office if you have any questions.

Ann C. De Groat

ANN C. DEGROAT
Regional Director
Child Nutrition Programs

Attachment

JAN 24 1996

CN-123

Cooperation with the Department of Education - National
Assessment of Educational Progress

Regional Directors
Special Nutrition Programs
All Regions

We met with officials from the Department of Education (DOE) to discuss cooperation between our departments in serving low-income children. The laws for several DOE programs reference free and reduced price school meal eligibility as a criterion for educational services or require that DOE report information or provide services according to economic status, gender, race, and other categories. School officials may continue to provide aggregate data on children eligible for free and reduced price school meals. Moreover, Section 108 of Public Law 103-448 allows the use or disclosure of childrens' free and reduced price school meal eligibility status specifically to a person directly connected with the administration or enforcement of a Federal education program. While we believe that the law intends programs under the Department of Education to have access to children's free and reduced price school meal eligibility status, we believe that we must proceed with caution since student confidentiality and household privacy are sensitive areas. Additionally, the law includes some discretion in implementation. Therefore, we are drafting a regulation to implement this disclosure provision. In the interim, we believe that school officials may cooperate with education officials collecting data for the National Assessment of Educational Progress.

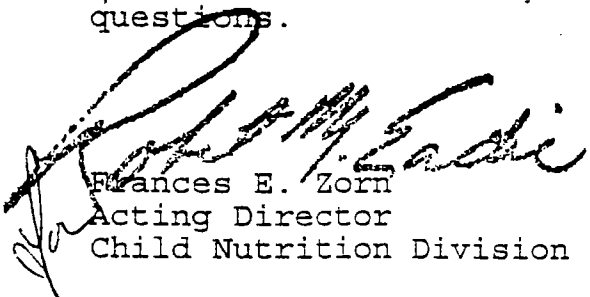
National Assessment of Educational Progress. School food service officials may disclose individual children's free or reduced price eligibility status, i.e., whether children are eligible for free or reduced price meals, to officials administering the National Assessment of Educational Progress (NAEP). A waiver of confidentiality by the childrens' parents/guardians is not required.

NAEP is a congressionally mandated survey of the knowledge and skills of children in major learning areas taught in school. The survey's purpose is to gather information that will aid educators, legislators and others in improving the educational

experiences of children. NAEP procedures guarantee the anonymity of participants in the survey; student names are not recorded on the assessment booklets, and the names are not removed from the schools. The results of NAEP are reported on the national level and by region of the country, not by State, school district or school. Results are also reported by gender, race/ethnicity, socioeconomic status and other variables.

Under the procedures described by Department of Education officials, children's names are used only briefly to associate their test activity with their economic status. The students' names are then no longer needed and are separated from the test materials. Since we believe that the confidentiality of children eligible for free and reduced price meals is adequately protected, the school food service may disclose children's free and reduced price eligibility status to Department of Education officials administering the NAEP.

Please forward this information to your State agencies. For your information, we have attached the letter from DOE explaining their means of safeguarding confidentiality and a copy of our August 31, 1995 response to DOE authorizing access to individual free and reduced price determinations. You may include these letters in your correspondence to State agencies if you wish. Contact Charles Heise or Barbara Semper at 703-305-2620 with any questions.



Frances E. Zorn
Acting Director
Child Nutrition Division

Attachments

AUG 31 1995

Mr. Emerson J. Elliott
Commissioner
Office of Educational Research and Improvement
Department of Education
Washington, D.C. 20208

Dear Commissioner Elliott:

Thank you for your letter of March 31, 1995, describing your process for protecting the privacy of students when collecting data for the National Assessment of Educational Progress. Based on this description, we are authorizing the release of students' free and reduced price eligibility status for use in the National Assessment of Educational Progress.

Student confidentiality and households' rights to privacy are sensitive issues. Therefore, we have not authorized the release of free and reduced price eligibility status of individual students pending issuance of final rulemaking on the issue. However, we believe that Section 9(b)(2)(C)(iii) of the National School Lunch Act, as amended by Section 108 of Public Law 101-448, clearly authorizes release of free and reduced price school meal eligibility status for programs administered by the Department of Education. Under the procedures you described, the students' names will be separated from their socioeconomic status and other personal information. Consequently, we believe confidentiality is adequately protected.

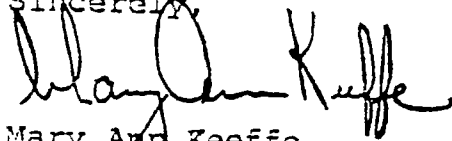
We will inform our State agencies of this determination and inform them that they may cooperate with officials administering the National Assessment of Educational Progress. Please note however, that the National School Lunch Act limits the information that may be disclosed to the eligibility status of the child, unless the consent of the child's parent or guardian is obtained. Additionally, the law mandates a fine of not more than \$1,000 or imprisonment of not more than 1 year, or both to a person authorized to receive the information who divulges, discloses or uses the information in any manner or to any extent not authorized by the law. Further, although the National School Lunch Act authorizes release of free and reduced price school meal eligibility status, we have no authority to require school officials to do so.

Mr. Emerson J. Elliott

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We regret the delay in responding to your letter. However, we hope this decision will assist you in making your assessment. If you have any questions, please contact Charles Heise or Barbara Semper at (703) 305-2620.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Ann Keefe". The signature is fluid and cursive, with the first name "Mary" and last name "Keefe" being clearly distinguishable.

Mary Ann Keefe
Deputy Administrator
Special Nutrition Programs